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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/586,214	06/02/2000	Thorsten Ott	10191/1431	8054

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EXAMINER

HERNANDEZ, OLGA

ART UNIT	PAPER NUMBER
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3661

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 23

Application Number: 09/586,214

Filing Date: June 02, 2000

Appellant(s): OTT ET AL.

MAILED

JUL 31 2003

GROUP 3600

KENYON & KENYON
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 6/02/03.

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(1) Real Party in Interest

A statement identifying the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

A statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief.

(3) Status of Claims

The statement of the status of the claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Invention

The summary of invention contained in the brief is correct.

(6) Issues

The appellant's statement of the issues in the brief is correct.

(7) Grouping of Claims

Appellant's brief includes a statement that claims 1, 2 and 8 do not stand or fall together and provides reasons as set forth in 37 CFR 1.192(c)(7) and (c)(8).

(8) ClaimsAppealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

(10) *Grounds of Rejection*

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1, 2 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sigl (5,794,735). This rejection is set forth in prior Office Action, Paper No. 16.

As per claims 1 and 8, Sigl teaches how to

- determine the actual speed of the vehicle (column 3, lines 18-20);
- predefine a set-point speed (column 4, lines 15-20);
- detect whether the vehicle is traveling on a descent (column 3, lines 20-23);
- calculate at least one manipulated variable based on the actual speed and the set-point speed only when the vehicle is detected as traveling on a descent (column 3, lines 22-26); and
- influence the actual speed of the vehicle on the basis of the at least one manipulated variable (column 3, lines 1-67 and column 4, lines 1-2).

Sigl performs some functions when the vehicle is traveling on a downhill. Therefore, Sigl detects when the vehicle is traveling on a descent. It can be read between lines.

As per claim 2, Sigl teaches at least that one manipulated variable is calculated only when one switch is activated.

(11) *Response to Argument*

Regarding appellant's argument in page 5 (2nd paragraph under arguments), the examiner maintains that in order to establish obviousness, the motivation needs not to be identical to that appellant. In Re Kemps, 40 USPQ 2d 1996.

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Further, to establish a *prima facie* case of obviousness, three basic criteria must be met.

First, there must be some suggestion or motivation, *either in* the references themselves or *in the knowledge generally available to one of ordinary skill in the art*, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). See MPEP § 2143 - § 2143.03 for decisions pertinent to each of these criteria.

Regarding the arguments in the paragraph bridging pages 5 and 6, the examiner maintains the inability to maintain the set speed after the engine output is reduced is the same as detecting the vehicle traveling on a descent (column 3, lines 42-53).

Regarding the arguments in page 6 (1st paragraph), the examiner maintains that in column 3, lines 55-59, the prior art discloses: the intervention in a braking device is preferably carried out as a function of the difference between the setpoint and the actual speed and leads to the braking device being influenced to adhere to the setpoint speed through the actual speed.

This only happens when the vehicle is going downhill. Therefore, it is the same as calculating at least one manipulated variable based on the actual speed and the setpoint speed only when the vehicle is detected as traveling on a descent.

Regarding the arguments in the paragraph bridging pages 6 and 7, the examiner maintains the inability to maintain the set speed after the engine output is reduced is the same as detecting the vehicle traveling on a descent (column 3, lines 42-53).

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Regarding the arguments in page 7 (1st paragraph), the examiner points out that the prior art of record goes through a process, because in column 3, lines 20-25 specifies the adjustment of the speed when the vehicle is downhill. Therefore, it has to detect that the vehicle is going downhill in order to adjust the speed.

Regarding the arguments in page 7 (2nd paragraph), the examiner maintains that Sigl teaches at least one manipulated variable is calculated only when the switch is activated (figure 2, column 4, lines 15-34).

Regarding the arguments bridging pages 7 and 8, the examiner maintains that the inability to maintain the set speed after the engine output is reduced is the same as detecting the vehicle traveling on a descent (column 3, lines 42-53). In column 3, lines 55-59, the prior art discloses: the intervention in a braking device is preferably carried out as a function of the difference between the setpoint and the actual speed and leads to the braking device being influenced to adhere to the setpoint speed through the actual speed.

This only happens when the vehicle is going downhill. Therefore, it is the same as calculating at least one manipulated variable based on the actual speed and the setpoint speed only when the vehicle is detected as traveling on a descent.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Olga Hernandez
Examiner
Art Unit 3661

O.H.

Art Unit: 3661

July 22, 2003

Conferees

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